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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MAHMOUD MOHAMED,

Plaintiff,

v.

JOHN POTTER, Postmaster General of the
United States,

Defendant.

No. C 07-3306 WDB

**STATEMENT OF POSITION OF JOHN
POTTER, POSTMASTER GENERAL
OF THE UNITED STATES**

Date: December 20, 2007
Time: 4:00 p.m.

The U.S. Attorney's Office recently became aware of this litigation and hereby submits this Statement of Position to inform the Court of the United States' position.

1. Jurisdiction and Service issues:

Plaintiff's complaint appears to state a federal question for judicial review, namely whether employees of the United States Postal Service committed the alleged discrimination against the plaintiff.

There has been no effective service of the complaint. The U.S. Attorney's Office is aware of

1 the following facts regarding service:

2 Plaintiff filed his complaint on June 22, 2007.

3 Plaintiff informed the Court in a filing on August 20, 2007 that he had not yet served the
4 Postal Service.

5 When a plaintiff names the federal government as a defendant, plaintiff must first serve the
6 United States as required by Rule 4. To serve the United States, plaintiff must serve several sets
7 of the summons and complaints, including by personal delivery to the U.S. Attorney or designee
8 in the Northern District of California, by registered mail to the Attorney General of the United
9 States in Washington, D.C., and then by registered mail to the named defendants in this case.
10 F.R.C.P. 4(i). Service must be as described by Rule 4 and actual notice is insufficient. Tuke v.
11 United States, 76 F.3d 155, 156 (7th Cir. 1996). All of these rules are well-known to plaintiff
12 and his attorneys from his prior litigation against the Postmaster General, Mohamed v. Potter,
13 Action 05-2194 CRB.

14 Plaintiff's attorney Andrew Shalaby, who is not appearing for him in either district court
15 action, raised the subject of this litigation with the United States Attorney's Office in November
16 2007. The United States Attorney's Office informed Mr. Shalaby and the plaintiff by letter dated
17 November 27, 2007 that plaintiff had not served the summons and complaint in compliance with
18 Rule 4. Plaintiff thereafter filed the undated, ambiguous "Certificate of Service" on December
19 11, 2007.

20 To summarize, Plaintiff has not served the complaint in compliance with governing law.
21 Plaintiff has not served any summons. Plaintiff has not filed any return of service of the
22 summons and complaint with the Court.

23 **2. Description of case and administrative proceedings**

24 Plaintiff's complaint states various claims of discrimination and retaliation alleged to have
25 occurred from 1998-2003. The complaint is similar in nature to an earlier action filed by the
26 plaintiff, Mohamed v. Potter, Action 05-2194 CRB. On December 11, 2007, defendant filed a
27 motion to relate this action with that earlier action.

3. Disputed legal issues

- a. Whether plaintiff properly served the summons and complaint.
- b. Whether plaintiff exhausted administrative remedies.
- c. Whether plaintiff can state any claim for relief.
- d. Whether plaintiff can carry his burden of proof on any claim.

4. Procedural history

June 22, 2007	complaint filed
August 20, 2007	plaintiff seeks extension of initial CMC, confirms to Court there has been no service
September 19, 2007	Court grants extension, sets CMC for December 20 th
December 11, 2007	plaintiff files undated, ambiguous "Certificate of Service"
December 11, 2007	plaintiff files letter seeking extension of CMC to February 21, 2008; plaintiff's letter shows service by facsimile on the United States Attorney's Office; plaintiff transmitted the letter by facsimile at 7:21 p.m. on December 12, 2007

5. Discovery to date

None.

6. Discovery plan

None.

7. Motions, changes or parties, or other anticipated hearings

The United States will bring motions to dismiss under FRCP 12(b)(4) and 12(b)(5) if plaintiff persists in his refusal to adhere to the rules governing service of the summons and complaint. These requirements are well known to plaintiff from the prior action.

8. Relief sought

See Plaintiff's prayer for relief including damages.

9. ADR certification

None at this time.

10. Consent to magistrate judge

1 Not at this time.

2 **11. Proposed deadlines and dates**

3 None at this time.

4 **12. Service list for counsel**

5 None available at this time.

6 **13. Other items from Local Rule 16-10**

7 None at this time.

8 **14. Disqualification or recusal information**

9 None known.

10
11 Respectfully submitted,
12 SCOTT N. SCHOOLS
United States Attorney

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14 Dated: December 13, 2007

15 /s/
JONATHAN U. LEE
Assistant United States Attorney

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee of the Office of the United States Attorney for the Northern District of California and is a person of such age and discretion to be competent to serve papers. The undersigned further certifies that she is causing a copy of the following:

STATEMENT OF POSITION OF JOHN POTTER, POSTMASTER GENERAL OF THE UNITED STATES

Mahmoud Mohamed v. Potter
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to be served this date upon the party in this action by placing a true copy thereof in a sealed envelope, and served as follows:

____ **FIRST CLASS MAIL** by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.

____ **CERTIFIED MAIL (#)** by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.

____ **PERSONAL SERVICE (BY MESSENGER)**

☒ **FEDERAL EXPRESS via Priority Overnight**

____ **FACSIMILE (FAX)** Telephone No.: See Below

to the party(ies) addressed as follows:

Mahmoud Mohamed
1620 Stuart Street
Berkeley, CA 94703-2010

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on December 13, 2007 at San Francisco, California.

/s/
MANIK BOWIE
Legal Assistant